IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 2806 of 2007(H)

OS.1/2006 of MUNI-MAGI.COURT,MANANTHAVADY

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PETITIONER:

JOSEPH, S/O.VARGHESE,
MUTTUVANA HOUSE, P.O.ARINCHERMALA,
MANANTHAVADI, WAYANAD DISTRICT.

BY ADV. SRI.B.G.BHASKAR
SRI.BIJU ABRAHAM

RESPONDENTS:

P.K.KRISHNANKUTTY, S/O.KUNHAYYAN,
PULLATVALAPPIL HOUSE, P.O.ARINCHERMALA,
MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.HARISH R. MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: A TRUE COPY OF THE SKETCH SHOWING THE LIE OF THE LAND

EXT.P2: -DO- OF THE PLAINT IN O.S.1 OF 2006 ON THE FILES OF MUNSIFF COURT, MANANTHAVADY

EXT.P3: -DO- OF THE COMMISSION REPORT DT.5.1.2006 AND SKETCH

EXT.P4: -DO- DT. 23.2.2006

EXT.P5: -DO- OF THE APPLICATION FILED AS I.A.383/2006 IN O.S.1/2006 ON THE FILES OF THE MUNSIFF COURT, MANANTHAVADY

EXT.P6: -DO- OF THE COUNTER STATEMENT FILED BY THE PLAINTIFF IN I.A. 383/2006 IN O.S.1/2006 ON THE FILES OF MUNSIFF OCURT, MANANTHAVADY

EXT.P7: -DO- OF THE DEPOSITION OF C.W.1 IN I.A.383/2006 IN O.S.1/2006 ON THE FILES -DO-

EXT.P8: -DO- OF THE ORDER IN I.A.383/2006 IN O.S.1/2006 ON THE FILES OF MUNSIFF COURT, MANANTHAVADY

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.2806 OF 2007 H

Dated this the 17th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order Ext.P8. It was an application filed by the defendant to set aside the commissioner's plan and report dated 5.1.2006 and 25.2.2006. The court below instead of adverting to the real averments proceeded and felt that a person who does not obey the orders of the court is not entitled to get such a relief from the court. If a person had violated the orders of the court there are appropriate remedies whereby he can be made to obey the orders of the court. As far as the present petition is concerned, it is one for setting aside the commissioner's report. I have perused the affidavit. What is required by the party is to note down certain things which, according to the party, had not been noted by the commissioner at the time of inspection. I think the said grievance can be redressed by directing the commissioner to visit the property and furnish the particulars which the petitioner wanted. Therefore, instead of setting aside the commissioner's plan and reports I am inclined to remit the same to the very same commissioner and direct him to furnish the particulars required to be noted by the writ petitioner. I direct both

parties to file work memo before the commissioner so that it can be noted by the commissioner and submitted before the court. So, for the said purpose the Court below is directed to remit the commissioner's plan and report to the same commissioner and direct him to submit a report as expeditiously as possible and then proceed to decide the suit in accordance with law as expeditiously as possible. Parties are directed to appear before the court below on 3.8.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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